

ARTICLE APPEARED
ON PAGE A-15

WASHINGTON POST

26 March 1985

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THE FEDERAL REPORT

Boland Law A Matter Of Debate

Confusion Controls Nicaragua Funding

By Joanne Omang
Washington Post Staff Writer

In 1983 Congress barred the government from spending money to try, directly or indirectly, to overthrow the leftist Sandinista government of Nicaragua.

Reagan administration backers have been reminding members recently that that law, known as the Boland amendment, has expired.

Also that no law bars the use of U.S. troops in the area.

Also that no law bars U.S. action in self-defense.

So is it legal to try to overthrow the Nicaraguan government? Perhaps by funding antigovernment rebels, as the administration wants to do?

Well, yes and no.

The legal framework for the approaching congressional debate over whether to provide \$14 million for those rebels is confusing at best.

It involves several laws now in place, at least one nonbinding "sense of Congress" resolution, international treaties and pieces of legislation that have expired.

Part of the confusion arises because the name of Rep. Edward P. Boland (D-Mass.), former chairman of the House Select Committee on Intelligence, is—or was—attached to at least three amendments: the original, which was attached to the continuing resolution for fiscal

1983; a modified and much tighter version, which was passed the next year; and one passed for fiscal 1985, which is still in force.

The last one cuts off all U.S. funding for the rebels—direct or indirect and for whatever purpose—until President Reagan wins more funding from both chambers of Congress.

"I didn't know there was a distinction between 'the Boland amendment' and 'the Boland cutoff,'" Rep. Robert W. Kastenmeier (D-Wis.), a new member of the Intelligence Committee, said yesterday. "I thought they were both still applicable."

Like most members, he has had many other things on his mind and could be forgiven his confusion, except that neither side in this debate is in a forgiving mood.

"It's an obvious ruse by the administration," said Judy Applebaum, an attorney who represents Nicaragua. "If they think they can fool anyone into thinking it's now legal to overthrow Nicaragua because the Boland amendment has expired, they're absolutely wrong . . . It's still illegal under international law."

A key Senate Republican staff member denied that any trickery was involved.

"People got tired of hearing they [White House officials] were contravening 'the Boland amendment' when the president says he wouldn't mind if the present structure in Nicaragua were different," he said. "There's a lot of misunderstanding."

Further, he said, international law can be read two ways.

For the record, here is a brief map of the legal terrain.

■ The so-called "Boland amendment" of fiscal 1983 banned U.S. funding for any effort to overthrow Nicaragua, but the Reagan administration argued that the rebels were only trying to stop Nicaragua

from supplying arms to leftist guerrillas in El Salvador. The aid continued to flow, and the amendment expired in 1983.

■ The "Boland cutoff" for fiscal 1984 banned further funding for the rebels no matter how it was used, and the last U.S. government check went out to them in May 1984. This provision expired last October.

■ The "Boland compromise" for

fiscal 1985, now in effect, extended the funding ban, but allows the president to seek another \$14 million under certain circumstances. He must certify to Congress that Nicaragua continues to arm the Salvadoran rebels and that the Nicaraguan rebels need the money for arms to help stop that practice. After 15 days, the measure is subject to an up-or-down vote by both houses, no amendments permitted. The administration thus controls the timing of the vote.

■ The "Foley amendment" on fiscal 1985 defense funding tried to bar use of U.S. troops "into or over the countries of Central America for combat," but it passed only as a nonbinding "sense of Congress" resolution. The House Foreign Affairs subcommittee on the Western Hemisphere has approved a binding version of this amendment for fiscal 1986.

■ The charters of the United Nations and the Organization of American States both bar territorial violations and direct or indirect interventions. But there are provisions for "collective self-defense"—which the administration cited in its invasion of Grenada.

Continued

21

BOLAND LAWS

■ **Public Law 97-377, Sec. 793.** (Amendment to the Continuing Resolution for Fiscal 1983, which expired Sept. 30, 1983):

None of the funds provided in this act may be used by the [Central Intelligence Agency] or the [Defense Department] to furnish military equipment, military training or advice, or other support for military activities, to any group or individual, not part of a country's armed forces, for the purpose of overthrowing the government of Nicaragua or provoking a military exchange between Nicaragua and Honduras.

■ **PL 98-473, Sec. 8066.** (Amendment to the DOD section of the Continuing Resolution for Fiscal 1985):

(a) During fiscal year 1985, no funds available to the CIA, DOD or any other agency or entity of the U.S. involved in intelligence activities may be obligated or expended for the purpose, or which would have the effect, of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement or individual.

(b) This prohibition shall cease to apply if after Feb. 28, 1985 . . . [certain conditions are met].